

BEFORE THE FEDERAL ELECTION COMMISSION

SECRETARY

In the Matter of

MUR 5773

DeNUNZIO FOR CONGRESS

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

2007 MAR 15 P 4:43
SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated (i.e., matters) and are deemed inappropriate for review by the Office are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5773 as a low-rated matter. In this case, the complainant alleges DeNunzio for Congress ("Committee") failed to use appropriate disclaimers on campaign mailers sent out on San Francisco Republican Party stationary. Additionally, two local party committees, Citizens for a Better San Francisco and Republicans United for San Francisco failed to report over \$5,000 they each raised to support the DeNunzio campaign.

The Citizens for a Better San Francisco and Republicans United for San Francisco responded by noting that they operate for the sole purpose of supporting candidates for city and county office. The committees explained that in California each county has a central committee representing a state political party. The central committee in San Francisco

1 appoints the winner of the federal primary election to the central committee as an ex-officio
2 member. Thus, in this case, candidate Michael Anthony DeNunzio was appointed to the
3 central committee, but neither the Citizens for a Better San Francisco or Republicans United
4 for San Francisco provided any support for his candidacy beyond the primary election. The
5 complainant, however, did provide evidence that the two committees listed Michael
6 DeNunzio, along with several local candidates, as an endorsed candidate on several pre-
7 primary campaign flyers.

8 The alleged disclaimer violation in this matter appears to be unsupported and
9 speculative, since it based primarily on the fact that the candidate committee shares the same
10 mailing address as the local party committee. The only evidence of any expenditure by the
11 Citizens for a Better San Francisco and Republicans United for San Francisco on behalf of
12 DeNunzio for Congress is the pre-primary flyers that included the candidate along with a
13 slate of local candidates. Thus, in reviewing the speculative nature of the complaint along
14 with the de minimis amount of the potential in-kind contribution involved in this matter and
15 in furtherance of the Commission's priorities and resources, relative to other matters pending
16 on the Enforcement docket, the Office of General Counsel believes that the Commission
17 should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*,
18 470 U.S. 821 (1985).

19 **RECOMMENDATION**


20 The Office of General Counsel recommends that the Commission dismiss
21 MUR 5773, close the file effective two weeks from the date of the Commission vote, and
22 approve the appropriate letters. Closing the case as of this date will allow CELA and
23 General Law and Advice the necessary time to prepare the closing letters and the case file for
24 the public record.

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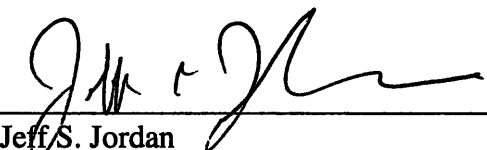
Thomasenia P. Duncan
Acting General Counsel

3 / 15 / 07
Date

BY:



Gregory R. Baker
Special Counsel
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Jeff S. Jordan
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Complaints Examination
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Attachments:
Narrative in MUR 5773

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5 **MUR 5773**

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7 **Complainant:** Eve Del Castello

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9 **Respondents:** DeNunzio for Congress and
10 Paul S. May, as Treasurer
11 Michael Anthony DeNunzio
12 Citizens for a Better San Francisco and
13 Edward G. Poole, as Treasurer
14 Republicans United for San Francisco and
15 Howard Epstein, as Treasurer
16

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18 **Allegations:** The complainant alleges that DeNunzio for Congress ("Committee") failed
19 to use appropriate disclaimers on campaign mailers sent out on San Francisco Republican
20 Party stationary, which solicited contributions. Additionally, both Citizens for a Better
21 San Francisco and Republicans United for San Francisco failed to report over \$5,000 they
22 each raised to support the DeNunzio campaign.
23

24 **Response:** The Committee responded by denying that it used any stationary other than
25 its own letterhead, which included the appropriate disclaimer. Further, the complainant
26 failed to supply any evidence that the Committee had used San Francisco Republican
27 Party stationary. The Committee noted that it used a mailbox at the United Parcel
28 Service store as its mailing address, which coincidentally was also used by the San
29 Francisco Republican Party.
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31 The Citizens for a Better San Francisco and Republicans United for San Francisco filed a
32 joint response that indicated that they operate for the sole purpose of supporting
33 candidates for city and county office. The committees explained that in California each
34 county has a central committee representing a state political party. The central committee
35 in San Francisco appoints the winner of the federal primary election to the central
36 committee as an ex-office member. Thus, in this case, candidate Michael Anthony
37 DeNunzio was appointed to the central committee, but neither the Citizens for a Better
38 San Francisco or Republicans United for San Francisco provided any support for his
39 candidacy.
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41 **Date complaint filed:** July 19, 2006

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43 **Amendment filed:** August 1, 2006

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45 **Responses filed:** August 2, 2006; August 14, 2006; and September 18, 2006

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